

J. C. Brock Corporation and District Union Local One, United Food and Commercial Workers International, AFL-CIO-CLC, Petitioner. Case 3-RC-9916

June 27, 1994

DECISION, DIRECTION, AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

The National Labor Relations Board has considered determinative challenges in an election held October 29, 1992, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 55 for and 52 against the Petitioner, with 7 challenged ballots, a number sufficient to affect the results.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the record in light of the exceptions and briefs and adopts the hearing officer's findings and recommendations¹ only to the extent consistent with this decision. Contrary to the hearing officer, we find, for the reasons set forth below, that line coordinators Beverly Burse, Stanley Fulgham, and Diane Sahm are not supervisors within the meaning of Section 2(11) of the Act, and thus that the challenges to their ballots should be overruled.

The Employer operates a fresh precut vegetable processing plant. Employees process a variety of raw vegetables through several different processing lines. The production process starts at the "prep" lines, where the produce is washed and cut or hand trimmed, and the produce is then sent to the "pack" lines, where it is weighed and packaged. There is also a separate "greens" production line, at which employees wash, grade, and package spinach, kale, and beet greens.

Lead Line Coordinator Diane Burse was one of two line coordinators assigned to the day-shift pack lines, which have approximately 40 employees, including approximately 10 temporary employees.² Production Supervisor Donna Kubiak had overall responsibility for the operation of both the prep and the pack lines on the day shift.

Line coordinator Stanley Fulgham was assigned to the day-shift "greens" production line, which had approximately 30 employees, including approximately 4

or 5 temporary employees. Production Supervisor David White had overall responsibility for the operation of this line on the day shift.

Line coordinator Trainee Diane Sahm was assigned to the pack and prep lines on the second shift,³ which had approximately 25 employees, including approximately 10 temporary employees. Production Supervisor Bill Keller had overall responsibility for the operation of all production lines on the second shift.

The hearing officer found that Burse, Fulgham, and Sahm were not directly involved in the hiring, firing, layoff, recall, promotion, or disciplining of employees. He also found that they did not assign overtime or schedule time off, and that they were not involved in the call-in procedure regarding absences.⁴

The hearing officer concluded that Burse, Fulgham, and Sahm were statutory supervisors based on his finding that they were sufficiently responsible for the work of the employees. The hearing officer noted that even if an individual directs work, that individual will not be found to be a supervisor if the work is of a routine and repetitive nature. He found that here, however, the production operation was not a classic industrial factory situation with rigid work schedules and long routine production runs, but rather was a fast-moving, flexible operation that processed various types of produce for many different customers. The hearing officer noted that while the actual production work itself was simple and unskilled in nature, the production process was dynamic rather than static, and required hands-on supervision. He noted that product changes were frequent, new orders were received throughout the shifts, and the work was not finished until the orders for a particular shift were filled. He also observed that Burse, Fulgham, and Sahm worked closely with the production supervisors to ensure that the work got done, and that they were responsible for keeping the production lines moving. He found that they independently transferred employees for both production and personnel-related reasons, and that employees were required to obey them upon pain of discipline. He further noted that employees went to either these line coordinators or to the production supervisors, depending on who was available, with work-related questions.

It is well established that the possession of any one of the indicia specified in Section 2(11) of the Act is

¹ In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to approve the withdrawals of the challenges to the ballots of Ross McMillan and Michael Taseuski, and to overrule the challenges to the ballots of Albert Richardson and Stanley Ziafert.

² These temporary employees, who were supplied by various temporary agencies, were not employees of the Employer and were not eligible to vote in the election.

³ Although the hearing officer found that Sahm was assigned to the greens line on the second shift, there is no support in the record for this; rather, it appears that Sahm was assigned to both the pack and prep lines on the second shift. The greens line was operated only occasionally on the second shift; it is possible that Sahm also served as the line coordinator trainee on the greens line on such occasions.

⁴ The hearing officer also noted that the line coordinators have many similarities with the unit employees, such as being paid hourly, being generally in the same wage range, receiving many of the same fringe benefits, using the same timeclocks, working the same hours, and receiving the same evaluations and employee handbook.

sufficient to confer supervisory status on an employee, provided that authority is exercised with independent judgment on behalf of management and not in a routine manner.⁵ Thus, the exercise of some otherwise supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not confer supervisory status on an employee.⁶

Contrary to the hearing officer, we find that the record indicates that the Employer's production process is routine, and that the level of authority exercised by Burse, Fulgham, and Sahm does not involve the use of independent judgment necessary for a finding of statutory supervisory status.

Regarding Burse, she testified that her primary job was to help keep the production lines moving in order to maintain production. At the beginning of the day, she and several production employees help prepare the pack lines for the day's production. Once production starts, she watches the lines to make sure that the right product is being processed for the right customer; she does this by checking product labels and tags and comparing them to production order sheets. She also fills out "time study records," which state what product is running, how many cases are being produced, and how many people are working on that product; it takes her several minutes to fill out this form, and she repeats this process every 15 minutes. She also helps Production Supervisor Kubiak prepare the cut list of production orders, or does this herself when Kubiak is otherwise busy. She is also responsible for relieving production line employees for bathroom or other short breaks, by either performing the relieved employee's job herself or finding another employee to do it. Burse normally does not have authority to send employees home early without first checking with Kubiak, although she has done so in emergency situations such as employee illness. She also has the authority to move employees to different places on the lines without first checking with Kubiak, for both production reasons, such as when there is a need for a larger quantity than usual of a certain vegetable, and personnel reasons, such as when two employees are not getting along. If an employee refuses to go to where Burse wants to send him or her, Burse then calls Kubiak.⁷

In finding that the Employer's production process is routine and that Burse's authority does not involve the exercise of independent judgment, we note the following. Although Burse testified that if an employee does not know where to go in the morning she will direct him or her based on where there is an empty spot

on the line, she also stated that most of the employees know by experience where on the lines they are supposed to work. Regarding the product changeovers cited by the hearing officer as evidence of the Employer's dynamic production process, where different products are produced on the same line, Burse testified that "it's an automatic system, usually . . . everybody knows the system. We go from carrots to carrot sticks, then you go to carrot chips, then you go to veg[etables]. . . . It's just a routine thing every day." She also testified that a majority of employees stay on the same line all day, but that some employees, particularly those on the broccoli and celery lines, do change lines during a product changeover; and that those employees generally know automatically when to switch to another line once they are finished with a particular vegetable, without her direction. As Burse testified,

they [the employees] know when we finish the order. See, we have two different lines. And one line we usually just run celery on it because we can only cut celery on this line. And all it is, is when we finish doing celery, all they do is turn around to another line, which we run broccoli and cauli on. . . . They automatically switch over when the order is finished.

Thus, it appears that these changes were largely routine and involved nothing more than stepping from one line to another, and thus required little actual direction. Although Burse stated that most employees knew where to go during these changeovers, when asked at the hearing what happened if someone did not know where to go, Burse replied, "Well, I usually tell them or somebody on the line, you know, says okay, we're doing broccoli now, or cauli now."

We find that Burse's testimony indicates that the Employer's production process is routine and that the employees generally need little direction in performing their duties. We also find, based on the above testimony, that Burse's authority regarding moving employees to different positions or telling them where to go is a function of routine work judgment and not a function of authority to use the type of independent judgment required of a statutory supervisor.⁸ Her authority is based on the need to get work done, and does not usually involve a judgment of employees' skill levels.⁹ We also note that it is undisputed that the production supervisors spend a majority of their workday on or near the production area and can be easily paged, if needed.

Regarding Fulgham, the hearing officer found that Fulgham's testimony closely paralleled that of Burse concerning his duties and responsibilities. Specifically,

⁵ *Bowne of Houston*, 280 NLRB 1222, 1223 (1986).

⁶ *Ibid.*

⁷ Although the hearing officer stated that employees were required to obey the line coordinators on pain of discipline, we note that the discipline emanates from the production supervisors, not from the line coordinators. As noted above, the hearing officer found that the line coordinators did not have authority to discipline employees.

⁸ *Clark Machine Corp.*, 308 NLRB 555, 555-556 (1992).

⁹ *Esco Corp.*, 298 NLRB 837, 839 (1990).

the hearing officer noted that Fulgham has the authority to move employees to where he determines they are needed in order to facilitate production; he has occasionally separated employees who were having problems working together; and he works closely with Production Supervisor White to ensure that the production line keeps moving while maintaining acceptable product quality. Further, the hearing officer noted that although the greens line does not have the product changeovers that the pack and prep lines have, bag labels on the greens line are frequently changed because of the Employer's various customers. Fulgham testified that employees working on the greens line know where they are supposed to go on the line and go there automatically, although occasionally Fulgham or White would assign a temporary employee who did not know where to go to a position based on where the line was short. If an employee refuses his directives, Fulgham will report the problem to White. Fulgham also stated that on all occasions where employees request to go home early, he first tells White, who then makes the decision.

Thus, given that Fulgham's responsibilities are similar to those of Burse, we find, for the reasons cited above in our discussion of Burse, that Fulgham's authority over employees is routine and does not involve the use of independent judgment which is necessary for a finding of supervisory status. In fact, the greens line appears to involve an even more routine production process than the pack and prep lines, as there are no product changeovers and Fulgham testified that when the bag labels are changed, no employees move at that time.

Sahm was promoted to her current position as a line coordinator trainee on the second shift on June 15, 1992. Sahm was told by her production supervisor, Keller, that she would be a trainee for about a year before becoming a regular line coordinator. The hearing officer found that Sahm's testimony regarding her duties and responsibilities closely paralleled that of Burse and Fulgham, noting that she transferred production employees for work-related reasons after first checking with Keller most of the time, that she corrected employees concerning work problems, and that she generally had the responsibility, along with Keller, to keep production moving. If an employee wished to leave work early for any reason, Sahm would tell the employee to ask Keller.

The record indicates that Sahm has the least amount of authority of the three line coordinators at issue here. Although the hearing officer stated that Sahm transferred employees after checking with Keller "most" of the time, Sahm testified that Keller would make the decision about whether to move employees and which employees to move, and she simply followed his instructions; she stated that she never moved employees

without receiving Keller's permission first. Keller essentially corroborated this testimony, stating that he would tell her to move people, and if she thought there had to be a move, she would tell him first and if he agreed, then she would move them.¹⁰ Thus, unlike Burse and Fulgham, Sahm does not even have the authority to move employees on the production lines without checking with her production supervisor first, and thus she clearly does not possess any of the indicia necessary for a finding of statutory supervisory status. Moreover, even assuming *arguendo* that she could move employees on the production lines like Burse and Fulgham, we find, for the reasons stated above, that such authority would be routine and would not involve the use of independent judgment which is necessary for a finding of supervisory status.

The hearing officer, while noting that the Board does not rely on secondary indicia of supervisory status alone to determine such status, found that an analysis of the secondary indicia here supported a finding that Burse, Fulgham, and Sahm are statutory supervisors. In this regard, the hearing officer relied upon the following: that Burse, Fulgham, and Sahm have routinely made changes on employees' timecards when they corrected various errors made by employees in punching on or off duty; that the supervisor/ nonsupervisor ratio would be highly unrealistic given the Employer's production process if the line coordinators were not found to be supervisors;¹¹ that Burse and Sahm have attended supervisor and/or management meetings;¹² that under some circumstances these line coordinators have authority to permit employees to leave work early; and that these line coordinators have the authority to resolve employees' squabbles.

As noted by the hearing officer, when there is no evidence that an individual possesses any one of the several primary indicia for statutory supervisory status enumerated in Section 2(11) of the Act, the secondary indicia are insufficient by themselves to establish statutory supervisory status.¹³ Thus, because we find, contrary to the hearing officer, that the line coordinators did not possess any of the primary indicia of supervisory status, we find it unnecessary to consider the secondary indicia relied on by the hearing officer.

Moreover, even if we were to consider these secondary indicia, we would not find them to be indicative

¹⁰ Keller stated that although he thought it was a line coordinator's responsibility to move people from one line to another, Sahm was not yet at the point of doing that.

¹¹ In this regard, the hearing officer stated Production Supervisor Kubiak would directly supervise approximately 70 employees, Production Supervisor White would directly supervise approximately 30 employees, and Production Supervisor Keller would directly supervise approximately 25 employees.

¹² Although Fulgham did not attend any management meetings, the hearing officer noted that Fulgham was absent from work during much of the time period that these meetings took place.

¹³ *St. Alphonsus Hospital*, 261 NLRB 620, 626 (1982).

of supervisory status under the facts of this case. For example, regarding the authority to make changes to employees' timecards, we find that the record indicates that the line coordinators would mark the cards only to correct mistakes made by the employees, such as when an employee would forget to punch in or out for lunch or would double punch his card. Thus, no independent judgment was exercised by the line coordinators in correcting such mistakes.¹⁴ Regarding Burse's and Sahm's attendance at supervisory and/or management meetings, the record indicates that the supervisors have production meetings every day which Burse and Sahm do not attend. Burse and Sahm have attended only a few meetings during the busy holiday season which all the supervisors, line coordinators, schedulers, and the produce buyer have also attended in order to ensure that sufficient product was available. Such infrequent attendance at meetings for which it has not been shown that personnel or work policies were discussed does not indicate supervisory status. Regarding the ratio of supervisors to nonsupervisors if the line coordinators are not found to be supervisors, we note that such ratios are not determinative of supervisory status, particularly when the work to be supervised is routine.¹⁵ Finally, regarding the authority to permit employees to leave work early, it appears that only Burse has exercised this authority without first receiving approval from her production supervisor, and then only in cases of an emergency, such as an employee

being sick. Such authority to permit an employee to leave work early in the case of an emergency is not determinative of supervisory status.¹⁶

Thus, we conclude that the Petitioner has not met its burden of establishing that Burse, Fulgham, and Sahm were supervisors within the meaning of Section 2(11) of the Act. Rather, we find that the evidence shows that the Employer's production process was routine, and that the authority possessed by Burse, Fulgham, and Sahm was exercised in a routine manner, and thus was insufficient to establish supervisory status under the Act. We, therefore, find that Burse, Fulgham, and Sahm are not statutory supervisors and conclude that the challenges to their ballots should be overruled.

DIRECTION

IT IS DIRECTED that the Regional Director for Region 3 shall, within 14 days from the date of this Decision, Direction, and Order, open and count the ballots of Beverly Burse, Stanley Fulgham, Diane Sahm, Albert Richardson, Stanley Ziafert, Ross McMillan, and Michael Taseuski, and thereafter prepare and cause to be served on the parties a revised tally of ballots, on the basis of which he shall issue an appropriate certification.

ORDER

It is ordered that this proceeding is remanded to the Regional Director for Region 3 for further processing consistent with this decision.

¹⁴ *Clark Machine*, supra, 308 NLRB at 556.

¹⁵ *Hydro Conduit Corp.*, 254 NLRB 433, 441 (1981); *Sears, Roebuck & Co.*, 292 NLRB 753, 756 (1989).

¹⁶ *McCullough Environmental Services*, 306 NLRB 565, 566 fn. 5 (1992); *Hydro Conduit*, supra at 439.